PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Joseph M. Jilka ART UNIT: 1635
SERIAL NO: 10/086,062 EXAMINER: Epps, J.
FILED: February 28, 2002
TITLE: NOVEL PLANT PROMOTER SEQUENCES AND METHODS OF USE FOR SAME

131 DECLARATION OF JOSEPH M. JILKA

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

I, Joseph M. Jilka hereby declare the following:

1. That I am the inventor for the above-identified patent application; that I conceived and reduced to practice in the United States the invention claimed in the above-identified patent application prior to the international publication date of March 23, 2000, of the cited PCT Application No. WO 00/15810 to Goldsbrough as evidenced by the enclosed notebook pages.

2. Attached Exhibit A is a copy of notebook records relating to this conception wherein construction of proposed versions of the ubiquitin variants show a no heat shock version. Also relating to this conception is Exhibit B which is a copy of a table listing the promoters made which show a no heat shock version. Attached Exhibit C are primers among which is the no heat shock version, version 4A, 4B.

3. That pursuant to this conception, I actually reduced to practice in the United States the invention claimed in the above-identified patent application prior to March 23, 2000, the international publication date of the cited Goldsbrough patent. Attached Exhibit D and E are copies of the notebook records of Kathy Beifuss, who worked under my direction and supervision, however, did not contribute materially to the above-identified invention, relating to the actual reduction to practice, wherein Exhibit D shows use the no heat shock

version in a mini-prep and Exhibit E shows use of the no heat shock version in sequencing. Additionally, attached Exhibits F and G relating to the actual reduction to practice is a copy of the notebook records of Chris Brooks and Elizabeth Wilfong, both who worked under my direction and supervision, however, did not contribute materially to the above-identified invention, showing the GUS reporter gene expression in corn seed using the Ubi promoter variant, GSC, the ubiquitin promoter having no heat shock elements. Wherein total soluble protein (1μg) was incubated in 100μl lysis buffer and the reaction initiated with 5mM 4-methylumbelliferyl β-D-glucuronide (MUG). The reaction was incubated for up to about 20 minutes at 37°C. At specific time points approximately 25μl of volume of the reaction mixture was transferred into a reading plate that had 175μl of Stop buffer in the well. The reaction plate was placed at 37°C until the next time point. Generally readings at 0, 15, 30, and 60 minutes were taken. Plates were read at 360nm excitation wavelength and 460 nm emission wavelength. GUS protein levels were then calculated by comparison to a standard curve of 1-100μM 4-methylumbelliferyl. Exhibit G shows results from a 10 minute reading. The dates of these records have been redacted, however, the acts of conception and reduction to practice occurred prior to March 23, 2000, the international publication date of the cited Goldsbrough patent.

4. That Exhibits, A, B, C, D, E, F, and G, which relate to the aforementioned conception and reduction to practice, correspond to the invention disclosed and claimed in the above-identified patent application.

5. The undersigned further declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application of any patent issuing thereon.

Date: 7/17/02

Joseph M. Jilka